

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7697 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

SHAH SONAL THAKORLAL

Versus

SOUTH GUJARAT UNIVERSITY

Appearance:

MR DEVANG T SHAH, Advocate, for Petitioner.
MR R.R. VAKIL, Advocate, for Respondent No. 1 and 2.
MISS HARSHA DEVANI, A.G.P. Respondent No. 3.

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/04/96

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the Notification dated 19-5-1995 of the Syndicate whereby the petitioner's T.Y. B.Com. Examination has been cancelled and she has been prevented from appearing at the said examination.

2. The petitioner appeared at T.Y. B. Com. examination held in the month of November 1994 conducted by South Gujarat University. The petitioner was served with a show-cause notice dated 20-2-1995, calling upon her as to why she should not be punished for having adopted unfair means at the examination. It is also alleged that in the Answer-book of Advance Accounting and Auditing the petitioner used unfair means by answering the questions in the Answer-book outside the examination hall. The basis of the allegation is the Report of the Examiner saying that the Answer-book contain the answers in different hand writing. The petitioner submitted the reply to the show-cause notice denying the allegations. The petitioner appeared before the "Achar Samiti" (Disciplinary Authority) on 2-3-1995. The petitioner made a statement before the "Achar Samiti" that hand writings in the Answer-book are in her own hand writing. It was asserted that there was no difference in the hand writings. She also gave offer to write before the "Achar Samiti". It was submitted that the hand writings may appear to be different as some questions are answered in usual manner whereas other questions are answered in haste. The petitioner was asked by the "Achar Samiti" to write before them in usual manner as well as in haste. After hearing and perusing the hand writing made before the "Achar Samiti" by the petitioner, the "Achar Samiti" came to the conclusion that the petitioner had not adopted alleged unfairmeans at the examination and the "Achar Samiti" made recommendations to the Syndicate to exonerate the petitioner.

3. It appears that the Syndicate referred back the matter to the "Achar Samiti", for reconsideration. The petitioner was again called by the said "Achar Samiti" on 11-4-1995. The petitioner reiterated the explanation given by her which was accepted by the "Achar Samiti" and the "Achar Samiti" again made the same recommendations. The Syndicate authorised the Vice Chancellor to take appropriate decision in the matter. The Vice Chancellor appears to have taken the decision against the petitioner and as such the Syndicate issued the Notification dated 19-5-1995 holding the petitioner guilty of unfairmeans and cancelling her 1994-95 examination and further debarring her till the end of academic year 1995-96.

4. Mr. Sharad G. Joshi, Officiating Registrar has filed the reply on behalf of the respondent South Gujarat University reiterating the allegations of unfairmeans against the petitioner. It is submitted that the

decision was taken by the Vice Chancellor on the material before him. It is also submitted that the decision of the Vice Chancellor was communicated to the petitioner under the communication dated 7-6-1995. The respondent University has given outward number of the said letter being Outward No.5155.

5. I have heard Mr. Devang T. Shah, learned Counsel for the petitioner and Mr. R.R. Vakil, learned Counsel for the respondent University. It is contended by the petitioner that the "Achar Samiti" by a reasoned order arrived at the conclusion that there was no case of unfairmeans against the petitioner. This decision has been reversed by the Vice Chancellor without affording any opportunity of hearing. He, therefore, submits that the impugned order holding the petitioner guilty of unfair means is violative of principle of natural justice. Mr. Shah submits that the case of the petitioner is squarely covered by the decision of this Court rendered in the case of Devang V. Desai & Ors. Vs. Registrar, South Gujarat University, reported in 1995(2) GCD 212. In the said decision this Court held that the Syndicate disagreeing with the decision taken by the Committee an opportunity of hearing is required to be given to the student and non-compliance of the principles of natural justice will vitiate the decision of the Syndicate. Mr. R.R. Vakil, learned Advocate appearing for the respondent University sought to distiguish the said decision on the ground that when the matter came up for admission, this Court asked learned Counsel for the petitioner that if she was prepared to appear before the Vice Chancellor but that was not accepted and as such it is not open for the petitioner to make a grievance that she has not been given an opportunity of hearing. But it does not appear from the order sheet of the case that the petitioner was asked to so. Be that as it may. The petitioner has been sufficiently penalised. Considering the facts of the case, I find no reason to take different view than what has been taken in the aforesaid case.

6. In view of the aforesaid, this Special Civil Application is allowed and the impugned order dated 19-5-1995 annexure 'D' to the petition is quashed and set aside. In view of the fact that the petitioner's one year is wasted it would not be appropriate to give any opportunity to the University to reopen the matter. Rule is made absolute to the aforesaid extent. There shall be no order as to cost. D.S. permitted.